

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Wireline Competition Bureau Seeks)	WC Docket No. 21-450
Comments on the Implementation)	
Of the Affordable Connectivity Program)	
)	

COMMENTS OF AT&T

Cindy J. Manheim
David J. Chorzempa
David L. Lawson

AT&T Services, Inc.
1120 20th Street NW
Suite 1000
Washington, D.C. 20036

Its Attorneys

December 8, 2021

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AT&T Services, Inc., on behalf of itself and its affiliates (collectively, “AT&T”), submits these comments in response to the Public Notice¹ seeking comment on the implementation of the Affordable Connectivity Program (“ACP” or “Program”) created by the Infrastructure Investment and Jobs Act (“Act”).²

I. INTRODUCTION AND SUMMARY

AT&T applauds Congress and the Commission for their efforts to make broadband service more affordable and accessible for all. The ACP is an important continuation of the commitment to connect low-income households to the internet. In the Consolidated Appropriations Act, 2021, enacted on December 27, 2020, Congress established a temporary \$3.2 billion Emergency Broadband Benefit (“EBB”) Program to help households get and stay connected during the pandemic by providing a monthly benefit on eligible fixed and mobile broadband services and associated equipment together with a one-time discount on eligible connected devices. The Commission adopted rules designed to encourage consumer and provider participation while also protecting against waste, fraud and abuse. In the almost seven

¹ *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453 (rel. Nov. 18, 2021)(“Public Notice”).

² Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021)(“Act”).

months since providers could begin enrolling households, the EBB Program has over 8 million households enrolled,³ and a plethora of participating providers keeping households connected to the internet during the pandemic for work, school, telehealth and access to other important services. As part of its commitment to closing the digital divide, AT&T participates in the EBB Program with both home internet and wireless service offerings.

Congress appropriately recognized the importance of continuing to support connectivity to the internet for low-income households that may not otherwise be able to afford an internet connection. The Act provides for an “extension and modification” of the EBB Program and renames it the ACP, in recognition that it will be a long-term program.

The Act also recognizes the need to facilitate an orderly transition for both participating providers and consumers from the EBB Program to the ACP. The Public Notice acknowledges that the Act overlays the EBB Program requirements with new ACP requirements.⁴ Therefore, the rules enacted by the Commission for ACP should build upon the current EBB Program rules while providing guidance on the new ACP statutory requirements and allowing participating providers the time necessary for implementation. In establishing the ACP, the Commission must continue to guard against waste, fraud and abuse while not making it unduly difficult for providers to participate and consumers to receive the benefit.

As discussed in more detail below, the Commission can achieve these objectives by 1) establishing a smooth transition process from the EBB Program to ACP, so that households enrolled in the EBB Program do not experience a gap in the benefit or service, 2) ensuring there is not a significant gap between the time EBB Program enrollments cease and ACP enrollments

³ See <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (as of Nov. 28, 2021)

⁴ Public Notice at 2.

begin, 3) allowing an adequate implementation period once the Commission issues new ACP rules, and 4) establishing a structure that encourages provider participation through flexible requirements that recognize the complexities of provider systems.

II. TRANSITION FROM THE EBB PROGRAM TO ACP

A. EXISTING EBB PROGRAM HOUSEHOLDS SHOULD MOVE SEAMLESSLY TO THE ACP

The Act contemplates the need for an orderly transition “for participating providers and consumers from the Emergency Broadband Benefit Program...to the Affordable Connectivity Program.”⁵ Congress also provided a 60-day transition period, which the Commission has announced will start on December 31, 2021, for households currently receiving the EBB benefit to “be eligible for the affordable connectivity benefit in the same amount in effect with respect to that household, as of the day before the effective date.”⁶ Clearly, Congress intended to make the transition for EBB-enrolled households to ACP as seamless as possible.

The proposal in the Public Notice to require EBB-enrolled households to opt-in or affirmatively request enrollment in the ACP⁷ is contrary to the intent and structure of the Act. The ACP is a restructuring and extension of the EBB Program, not a new program, and the Commission rules should treat it as such. Instead of requiring households to undergo a burdensome opt-in process, participating EBB providers should be required to give EBB-enrolled households notice at least 30 days in advance of the reduction in benefit amount, if applicable.⁸ This time period is consistent with the previous EBB end of program disclosures

⁵ Act, §60502(a)(10)(C)(ii)(V).

⁶ Act, §60502(b)(2).

⁷ Public Notice at 122.

⁸ Notice regarding the change in benefit amount should not be required for those EBB-enrolled households that will not be impacted. For example, the Act does not modify the maximum benefit amount available to participating Tribal households of up to \$75, and EBB-enrolled households on non-Tribal lands who

that have now been waived.⁹ The notice should explain the transition to ACP, the reduction in benefit amount, if applicable, and the participating household's ability to cancel service at any time without incurring an early termination fee.¹⁰

Participating EBB providers should be afforded flexibility in how this transition notice is conveyed to EBB-enrolled households as there is not a one-size-fits-all approach. For example, AT&T's prepaid wireless customers are accustomed to receiving important information through text messages with links to additional online information and generally receive service-impacting information in this manner; whereas, AT&T's home internet service customers are accustomed to receiving bill messages or direct mail with important service-impacting information. Participating providers have every incentive to make this transition as seamless as possible for EBB-enrolled households and will want to clearly convey this important information.¹¹ Overly prescriptive rules around how notice is delivered will not benefit the consumer.

Requiring EBB-enrolled households to affirmatively opt-in to continue with ACP will only cause unnecessary consumer confusion and frustration. As the ACP is an extension and modification of the EBB Program, many EBB-enrolled households will likely believe they do not need to take any action to receive ACP. The Public Notice wisely seeks comment on what

subscribe to a plan priced at \$30/month or less will similarly not experience a change to their benefit in transitioning to the ACP.

⁹ See 47 CFR §54.1610(d) (required participating providers to provide notice at least 30 days before the end of the EBB Program); see also, *Emergency Broadband Benefit Program, Affordable Connectivity Program*, Order, WC Docket Nos. 20-445 and 21-450 (rel. Nov. 26, 2021).

¹⁰ Consolidated Appropriations Act, div. N, tit. IX, §904(b)(6)(B)(ii).

¹¹ During the 60-day transition period that starts on December 31, 2021, the benefit for EBB-enrolled households will remain up to \$50 on non-Tribal lands. While there should not be any restrictions on households changing participating providers during the transition period, it is not reasonable to require participating providers to enroll transitioning households during the 60-day period with the up to \$50 benefit. In addition to the difficulties in tracking this information, which may lead to additional waste, fraud and abuse, it is not clear how to ensure these households that move to a different provider will receive the appropriate information about the benefit decreasing at the end of the 60-day transition period only creating further confusion for the household.

would happen to these EBB-enrolled households if they did not opt in. There are no good options for these households - one option is to remove the benefit, and the household would be responsible for the full charge for broadband service, and the other option is that the household's broadband service would be terminated.

If at the end of the transition period, the EBB-enrolled household does not opt-in to ACP and the benefit is removed completely, requiring the household to be responsible for the full charge of service could well impose a hardship on a household, who have limited financial means. Given the Act effectively creates the ACP as a modification and extension of the EBB, an opt-in requirement is contrary to its intent, which is to relieve eligible households from the full financial burden of broadband service. Such a requirement is also neither efficient nor orderly, as these customers would likely contact their provider to re-enroll in the program after receiving the first bill without the benefit. Meanwhile, the ACP benefit may not be applied retroactively,¹² so households would be responsible for the full, undiscounted charge for broadband service until such time as it is able to enroll in ACP, imposing a financial hardship on the eligible household.

The most disruptive action the Commission could take, which also would be completely counter to the intent of the Act, would be to require providers to terminate service to EBB households that have not opted in affirmatively to ACP. Many households have broadband bundled with voice service, so a requirement to terminate broadband service to a household may also mean terminating that household's voice service. As with the reduction in the voice Lifeline

¹² Pursuant to the EBB Program rules, there is a snapshot on the first of the month following the claim month and participating providers must certify claims by the 15th of the month with no mechanism for revisions which would currently prohibit a provider from seeking reimbursement for a benefit from a previous period. See 47 CFR §54.1608(g).

benefit, the change in benefit amount should be addressed through customer notification and not termination from the program or service.¹³

An affirmative opt-in requirement would also place enormous administrative burden on participating providers which is inconsistent with the Act. The more than 8 million households participating in the EBB Program enrolled over a period spread out over seven months, not all at once. Providers have spent extensive time and resources to establish systems and train staff to handle EBB enrollments based on the current rate of enrollment. But an affirmative opt-in requirement would likely result in all EBB-enrolled households contacting their respective provider within a very narrow period of time – likely after receiving the first bill that does not include the benefit, or when service is disconnected. Providers simply do not have the staffing and processes in place to manage the volumes that such a requirement would drive – nor, frankly, should they be required to do so when such a requirement could impose financial hardships on the very consumers the EBB Program and ACP are trying to assist. Providers will also have to track and separate out those households that affirmatively opted in and treat them differently than the other EBB-enrolled households.

The requirements for continuing with a benefit, possibly at a lower amount, after the transition of EBB-enrolled households to ACP, should not be treated the same as enrolling in ACP for the first time or transferring the Program benefit to a new provider. The resources participating providers would need to expend to implement such a requirement would be better used to provide awareness and education regarding ACP. Thus, the balance of minimizing disruption and ensuring a seamless continuation of benefit should outweigh any other concerns,

¹³ See 47 CFR §54.403(a) requiring decreases to Lifeline benefit without a requirement that the consumer affirmatively opt in to continue service with the decreased benefit amount.

and, therefore, EBB-enrolled households should be able to transition to ACP without affirmatively opting into ACP.

B. FOR CONTINUITY ACP ENROLLMENT SHOULD BE ALLOWED IN THE INTERIM UNDER EXISTING EBB RULES

As discussed above, ACP is an extension and modification of the EBB Program, so there is an expectation that households will be able to continue to enroll in the ACP benefit without significant delay. Preventing households from enrolling in ACP until the ACP rules are implemented by participating providers will likely cause consumer frustration. However, there are significant statutory changes in the ACP that require Commission interpretation, along with additional changes proposed in the Public Notice. Providers that plan to participate in ACP will need time to evaluate and implement the new ACP rules once issued. So that there is not a significant gap between the cessation of enrollment in the EBB Program on the one hand, and full implementation of the new ACP rules on the other, the Commission should allow participating providers to enroll eligible households in ACP pursuant to the existing EBB rules (except that the benefit amount for non-Tribal areas would be reduced to up to \$30 and the ACP eligibility criteria would apply) beginning December 31, 2021, until 60 days after the new ACP rules are issued.¹⁴ This will allow participating providers sufficient time to implement the new requirements in an orderly and efficient manner, while enabling eligible households to enroll in ACP without interruption. Otherwise, participating providers would either have to suspend Program enrollment or guess at the new ACP requirements,¹⁵ likely resulting in providers

¹⁴ As described in more detail below, some of the new ACP requirements may require a longer implementation period.

¹⁵ Unless the EBB rules apply during the period of December 31, 2021, to 60 days after the issuance of the new ACP rules, EBB participating providers transitioning to ACP would have to operate under three different rules – EBB rules for transitioning households, unknown rules from December 31, 2021 until the new ACP rules are issued, and then the new ACP rules. This would be confusing to both participants and participating providers.

making multiple unnecessary changes to their systems requiring technical development, in addition to training representatives assisting eligible households, and modifying information on websites and other customer facing materials for the interim period between December 31, 2021, and the implementation date of the new ACP rules. Numerous changes to the Program in a short period of time will likely also increase customer confusion. Operating under the current EBB Program rules until providers are able to evaluate and implement the new ACP rules serves the public interest by providing the most orderly and efficient transition for all involved, in a manner that ensures that households that want to avail themselves of the ACP benefit are able to do so throughout the transition period.¹⁶

III. THE ACT NECESSITATES CERTAIN RULE CHANGES

A. PARTICIPATING PROVIDERS SHOULD BE REQUIRED TO INCLUDE ACP ON ALL GENERALLY AVAILABLE ACTIVELY SOLD PLANS

The Act extended and modified the EBB Program, changing the focus from an immediate stop gap designed to quickly enable households to obtain and maintain connectivity to the internet during the pandemic, to a long-term program designed to allow low-income households stay connected. In doing so, Congress recognized that certain changes were needed to make the Program more sustainable in the long term. One such change was to remove the limitation that an eligible broadband service and its accompanying rate had to be offered as of December 1, 2020.¹⁷

¹⁶ Some participating providers may need a short period of time to make necessary changes to systems, websites and informational materials to reflect the benefit reduction, and modifications to the eligibility criteria along with any changes to the interface with USAC.

¹⁷ The Act deleted all references to “standard rate” which was defined as “the monthly retail rate for the applicable tier of broadband internet access service as of December 1, 2020, excluding any taxes or other governmental fee” and modified the definition of “internet service offering” eliminating the reference to December 1, 2020. By deleting the definition of “standard rate” the prohibition on applying the ACP to “taxes and other governmental fees” was also eliminated.

The ACP is not a temporary program. The broadband marketplace changes quickly with providers continually updating their broadband offers. By removing the December 1, 2020 limitation on eligible plans, qualifying households may choose from among the most up-to-date service offerings available to all consumers generally. Meanwhile, concerns focused on preventing the Program from potential waste, fraud, and abuse have been addressed by adding the requirement that the ACP benefit be applied to “any internet service offering of the participating provider at the same terms available to households that are not eligible households.”¹⁸ In other words, Congress placed reliance on the wide array of services available in the robustly competitive broadband marketplace to ensure that households participating in ACP have access to the competitive broadband service of their choice.

Applying the ACP benefit to all broadband plans that are generally available and actively sold will result in a much broader variety of plans for consumers to choose from than the EBB Program. System development work will be required to support the application of the benefit on this broader variety of plans, including some systems that were not impacted by the EBB-Program. This development work is further complicated if the ACP benefit must be applied after all other discounts or promotions. Participating providers, therefore, should have six months following the effective date of the new ACP rules, to apply the benefit to *all* generally available and actively sold broadband plans. For competitive reasons, participating providers will likely apply the benefit to most broadband plans much sooner. However, adequate time is needed for those situations that require more extensive system development work without disqualifying the provider from participating in ACP. Allowing this additional time will encourage provider

¹⁸ Act, §60502(a)(7)(A)(i).

participation and help ensure that the long-term objective of creating a widely available and sustainable ACP takes primacy over short-term transitional issues.

Participating providers should not be required to apply the ACP benefit to grandfathered plans. By definition, grandfathered plans are not generally available and actively sold.

Grandfathered plans are older plans that are no longer available to new customers, but those customers already on the plan can remain. The number of customers on grandfathered plans usually decline until there are none remaining, and the provider discontinues the plan.

Grandfathered plans, therefore, provide a transitional mechanism for providers and consumers.

AT&T has hundreds of grandfathered plans across its wireless and wireline businesses. Many of these grandfathered plans were introduced years ago, and some of these plans (and the systems supporting them) were obtained through acquisitions of other companies. The system upgrades that would be necessary to enable the ACP benefit to be applied to these antiquated plans would be burdensome and outweigh the benefit to this declining group of consumers. There would need to be extensive technology development work done on older billing systems that have limited functionality, some may not even be capable of properly applying the benefit. Again, this work is further complicated if the ACP benefit must be applied after all other discounts or promotions. Extensive testing would also be required to ensure that the benefit is applied correctly to the various types of plans. In addition, AT&T has grandfathered plans that offer only limited broadband capability (e.g., a wireless plan that only allows a few pictures to be sent) such that it would not make sense to apply the ACP benefit.

Further, the Act, by its terms, does not require the ACP benefit to be applied to grandfathered plans because, as explained above, grandfathered plans are no longer available to new customers/households, so the plans, and the ACP benefit, are not available on “the terms

available to households that are not eligible households.” Not only does the Act not require the ACP benefit on grandfathered plans, extensive work would be required to apply the ACP benefit to all grandfathered plans, especially older plans, as described above. ACP is a voluntary program and making participation too burdensome only discourages provider participation, which ultimately hurts the consumer by limiting the choices available. A better solution is to allow participating providers the flexibility to offer the ACP on the most relevant, select grandfathered plans for which system changes can be more easily accommodated. This would also allow households to retain the ACP benefit on broadband plans that participating providers grandfather after the initial implementation of ACP. This solution provides qualifying customers the opportunity to enjoy the ACP benefit without requiring participating providers to expend resources on those plans that have little relevance in today’s broadband marketplace.

Participating providers also require a reasonable amount of time to include the ACP benefit on the introduction of new innovative broadband products. When a provider brings a new product to market, the planning and development may, in some instances, take years. Additional extensive development work and testing would be required to support the ACP benefit on new products that use new technology platforms or systems which have not previously supported ACP. Participating providers, therefore, should be afforded six months from the introduction of a new product to apply the ACP-benefit. This accommodation is required so that the Commission’s rules do not impede or delay a provider participating in ACP from introducing a new product, one that could be introduced more quickly by a provider not participating in ACP.

B. RECONCILING STATUTORY PROVISION REGARDING ARREARAGES AND NON-PAYMENT

The Act allows providers participating in ACP to terminate broadband service to an ACP enrolled household “after 90-days of nonpayment,”¹⁹ but retained the requirement that a household is eligible for the benefit “regardless of whether any member of the household has any past or present arrearages with a broadband provider.”²⁰ To reconcile these two potentially conflicting provisions and give both meaning, a household that has a past or present arrearage with a broadband provider should be allowed to enroll in ACP, provided that the household otherwise meets the eligibility requirements. However, if a household enrolled in ACP has its service terminated for nonpayment after 90 days,²¹ the participating provider and its affiliates should not be required to allow the household to (re)activate service until that household has paid the amount past due.²² USAC should track whether a household has been de-enrolled from ACP due to non-payment so that this information is available to other providers who can decide whether to extend service and the ACP benefit to the household.

The Public Notice seeks comment on whether participating providers should be “required to mitigate the non-payment by lowering a consumer’s service quality (e.g., lowering the customer’s download speeds)”.²³ Many different providers may participate in ACP with different billing constructs and types of plans that include broadband service, such that the burden of prescriptive rules requiring the provider downgrade the customer’s broadband service

¹⁹ Act, §60502(a)(7)(B).

²⁰ Consolidated Appropriations Act, div. N, tit. IX, §904(a)(6).

²¹ The nonpayment should be measured from the date the initial invoice is issued.

²² Participating providers should be able, but not required, to allow a participating household whose account is over 90-days past due to continue to receive service or to allow a household that previously had its service disconnected while enrolled in the ACP to activate service with that participating provider. For example, an otherwise ACP eligible household may instead want to activate a prepaid service plan or a plan that does not require any out-of-pocket payment after the ACP benefit is applied.

²³ Public Notice at 83.

would outweigh any benefit. This should be an option for participating providers (and if offered by the participating provider an option for households), but not a requirement. As the ACP will be available on all generally available actively sold plans, consumers will have numerous options of plans to apply the ACP benefit, which may include plans without an out-of-pocket cost after the benefit is applied. Instead, as discussed above, USAC should develop a mechanism to track whether a customer has been de-enrolled from ACP due to non-payment and make this information available to all participating providers.

**C. PROVIDERS NEED TO DETERMINE IDENTITY OF CUSTOMER BUT
MAY NOT USE CREDIT CHECK INFORMATION TO DENY ACP
BENEFIT**

To ensure providers can continue to use existing processes and procedures to provide service to households receiving the ACP benefit, the Commission should be careful not to require unnecessary and burdensome changes to those functions. The Act provides that a participating provider “may not require the eligible household to submit to a credit check in order to apply the affordable connectivity benefit to an internet service offering of the participating provider.”²⁴

The Commission’s focus in implementing this requirement should be on whether the participating provider is using any credit information from an external source or credit bureau to deny service, require an advance payment, or require a deposit to activate an internet service offering for an ACP eligible customer. There may be good reasons for carriers to otherwise access third-party credit information. For example, providers, like AT&T, that offer postpaid broadband service are required to develop and implement a program designed to detect, prevent

²⁴ Act, §60502(a)(7)(A)(ii)

and mitigate identity theft pursuant to the Federal Trade Commission’s “Red Flags Law.”²⁵

Processes designed to mitigate identify theft are also useful for the ACP, as it prevents people from establishing fraudulent accounts. A participating provider may use systems that include information from credit bureaus to satisfy compliance with the Red Flags Law. In addition, the information that the provider must obtain from the customer to avoid identity theft is generally the same information that is required to do a credit check. So as not to limit participation in the ACP to prepaid service providers, the Commission should instead focus on whether a participating provider is using information from a credit bureau to deny internet service or require another type of upfront payment before activating a broadband service that is eligible for the ACP benefit. In addition, participating providers should not be prohibited from using information from credit bureaus for devices that are not covered by the ACP, such as wireless handsets.

The statutory provision regarding credit checks, an undefined term, is limited to the application of the ACP to an internet service offering. The Public Notice proposes prohibiting participating providers from inquiring, requesting or otherwise causing a consumer to submit to a credit check, or from accessing a consumer’s credit information, before enrolling the consumer in the Affordable Connectivity Program.”²⁶ Reading the plain language of the statute and the regulation proposal, a participating provider is simply not allowed to submit a household to a credit check before applying the ACP to the *internet service offering*.

²⁵ The Fair and Accurate Credit Transactions (“FACT”) Act was signed into law on December 4, 2003. Section 114 of the FACT Act added several new provisions to the Fair Credit Reporting Act (“FCRA”), and directed multiple agencies, including the Federal Trade Commission (“FTC”), to issue joint regulations and guidelines. On November 9, 2007, the agencies issued regulations and guidelines under Section 114 of the FACT Act to become effective January 1, 2008. These regulations and guidelines are referred to herein as the “Red Flags Rule,” found at 16 C.F.R. Part 681.

²⁶ Public Notice at 81.

D. SUPPORT FOR PROPOSED ACP COMPLAINT PROCESS

The Act requires the Commission to establish a dedicated complaint process for consumers who enroll in the ACP. AT&T supports the Public Notice proposal to fulfill this requirement by incorporating ACP related complaints into the Commission's current informal complaint process, adding ACP information to the Commission's Consumer Complaint Center, and having a dedicated pathway in the Consumer Complaint Center to file ACP-related complaints.²⁷ Participating providers should be afforded flexibility in how to provide Program participants with the contact information for the Commission's Consumer Complaint Center.

E. FLEXIBILITY IS NEEDED FOR PROVIDING ACP INFORMATION AND PROMOTING PUBLIC AWARENESS

The Act requires that when a customer "subscribes to, or renews a subscription to, an internet service offering" a participating provider "shall notify the customer about the existence" of the ACP and how to enroll.²⁸ As an initial matter, this requirement should only apply when a new customer is contacting a participating provider to activate service or to change their existing service plan. The majority of households receiving service from AT&T are on month-to-month plans and do not contact AT&T before their service continues for another month. Further, providers need flexibility in how this information must be delivered. Customers activate service or make changes to their service plans through numerous methods such as company-owned retail stores, authorized dealers, big box stores, online, and by contacting call centers. Participating providers are in the best position to determine the most efficient mode of communication to comply with this requirement, and, therefore, need flexibility in how information about ACP and enrollment is conveyed.

²⁷ Public Notice at 87.

²⁸ Act, §60502(a)(10)(A)

The Public Notice also seeks comment on the best methods to publicize the availability of ACP. AT&T's experience has shown that flexibility is needed to message different market segments as effectiveness of digital communications, mailers and in-store communications may vary by type of product and consumer segment. AT&T has promoted EBB several ways such as through direct customer communication along with traditional and social media promotion. It is important for any Commission rule to recognize the need for flexibility as a one-size-fits-all approach would likely result in communications that are ineffective, or at least less effective, in reaching the targeted audience.

The Public Notice further proposes that the Commission adopt an advertising requirement, similar to Lifeline, with a specified list of disclosures that participating providers must include on all materials describing the ACP.²⁹ The Commission should limit what is required in these disclosures in order to make the content more meaningful to consumers and allow flexibility to participating providers to tailor the disclosures to the advertising medium. Appropriate and meaningful disclosures on a web page may be different than what is included in a radio ad, billboard, or on social media. In addition, providers should be able to promote the availability of ACP through multiple channels without having to include the list of disclosures on all advertising materials.

²⁹ Public Notice at 115. Specifically, the Commission requested comment on requiring participating providers to indicate on all materials describing the ACP the eligibility requirements for consumer participation, that the ACP is non-transferrable and limited to one discount per household, a list of qualifying connected devices, if any, with device specifications, the provider's customer service telephone number, which must be prominently displayed on all promotional materials and on the provider's website, and that the ACP is a federal government benefit program operated by the FCC and, upon its conclusion, or when a household is no longer eligible, customers will be subject to the provider's regular rates, terms, and conditions.

IV. OTHER PROPOSALS IN THE PUBLIC NOTICE

A. A RULE PROHIBITING COMMISSIONS FOR SALES AGENTS SHOULD NOT BE IMPORTED INTO ACP

The Commission should not prohibit using commissioned representatives to sell services that are eligible for ACP.³⁰ The Commission refused to adopt such a prohibition for the EBB Program and should not reverse course for the ACP. Commission-based compensation arrangements are common for sales and customer support staff, and a rule prohibiting sales commissions may significantly impede the ability for eligible households to enroll in ACP.

As discussed above, the Act requires that ACP be offered on a broader range of broadband service plans and includes the requirement that when a “customer subscribes to, or renews” an internet service offering, the provider “shall notify the customer about the existence of the Affordable Connectivity Program, and how to enroll.”³¹ As ACP is a long term program with a substantial number of household that will be eligible for the Program, participating providers will need flexibility to design an experience that fulfills its requirements and is efficient for the consumer. This may mean integrating ACP enrollment into the normal sales process for service in its stores, call centers, authorized dealers and major retailers, the vast majority of which use commission-based compensation plans. For providers, such as AT&T, with unionized work forces, such compensation arrangements may be part of collective bargaining agreements that providers cannot unilaterally modify.

The proposed requirement prohibiting ACP providers from commission-based compensation based on the number of households who apply for or enroll in ACP, is a requirement from the Lifeline program.³² The Lifeline rule was adopted before the use of the

³⁰ Public Notice at 20.

³¹ Act, §60502(a)(10)(A).

³² See 47 CFR 54.406(b).

National Verifier was mandatory across all states³³ and before representatives that enrolled Lifeline participants were registered in the Representative Accountability Database (“RAD”).³⁴ As the Commission previously observed, “one of the main avenues historically leading to fraud and abuse in the Lifeline program [was] Lifeline providers determining subscriber eligibility.”³⁵ AT&T does not oppose instituting the RAD requirement³⁶ to minimize waste, fraud, and abuse in ACP as this provides an efficient mechanism for USAC and the Commission to gain insight into whether there is abnormal activity associated with a specific individual enrolling eligible households in the Program.

If the Commission nevertheless decides to adopt a rule, it should be limited to restricting commission-based compensation that is based specifically and solely on the number of successful ACP enrollments as this would be more directly focused on addressing financial incentives for fraudulent enrollments. As explained above, commission-based compensation is common and applies to all plans, is not specific to whether a consumer is eligible for or successfully enrolls in ACP, and hence, does not encourage waste, fraud and abuse in the ACP. Further, providers have incentives to ensure that all sales, and in particular, all sales upon which they pay commission, with or without ACP, are not fraudulent. The Commission, therefore, should not limit the ability of participating providers to continue using commission-based

³³ The Order prohibiting commission-based compensation for Lifeline was released in November 2019, but the National Verifier was not mandatory in all states until 2020. See *Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, Fifth Report and Order, 34 FCC Rcd 10886 (2019)(“*Fifth Report and Order*”) and USAC National Verifier implementation schedule at <https://www.usac.org/lifeline/national-verifier/how-to-use-nv/launches>.

³⁴ The RAD requirements were also adopted in the Fifth Report and Order.

³⁵ *Lifeline and Link Up Reform and Modernization*, Third Report and Order, 31 FCC Rcd 3962, 4007-4008, ¶129 (2016).

³⁶ See Public Notice at 20.

compensation for the sale of service, even if the sales representative also assists the customer in enrolling in ACP.

B. THE NON-USAGE RULE FOR ACP SHOULD REMAIN THE SAME AS FOR EBB

The Public Notice proposes applying a usage requirement to the ACP household that receives services for which a fee is not assessed or collected, as a condition for reimbursing the participating provider for the ACP benefit.³⁷ The EBB Program requires that participating providers certify that “every subscriber claimed has used their supported service, at least once during the service month being claimed”³⁸ and does not prohibit a provider from de-enrolling a subscriber for non-usage after the service month. AT&T strongly urges the Commission not to modify this requirement. Changing the measurement of non-usage from the service month to a rolling 30-day non-usage period with 15-days to cure as discussed in the Public Notice would require significant modification to a participating providers’ systems. Providers that have historically not participated in Lifeline are unlikely to have the infrastructure in place to track usage and flag customers that have not met a usage requirement on a rolling 30-day basis, as there is not a business reason for such capability. Even those providers that participate in Lifeline may not be able to scale their systems to cover the additional service offerings to which the ACP will apply. The 15-day cure period, which would also be rolling, adds further complication to systems tracking usage and in many instances may simply extend the period of time that a participating provider is unable to receive reimbursement for the ACP benefit that has already been provided to the customer. To avoid imposing complicated rules on participating providers, the Commission should not make any changes to the EBB Program rules for

³⁷ Public Notice at 45.

³⁸ 47 CFR §54.1608(c).

measuring the period of non-usage and the ability of participating providers to de-enroll customer from the program with no usage during the service month.

The Public Notice asks several questions about how a subscriber could demonstrate usage, including using a third-party app on subscriber devices to confirm the subscriber is assessing ACP supported services.³⁹ AT&T opposes such as requirement, if it is even technically feasible, as it would be unnecessarily burdensome and introduce security and customer monitoring concerns.

C. BUNDLED OFFERINGS SHOULD BE ELIGIBLE FOR ACP

As discussed in the Public Notice, the Commission allowed bundled services offerings such as those that include voice, data and texting to be eligible for EBB without requiring a cumbersome allocation of the benefit.⁴⁰ Given that ACP is an extension and modification of the EBB Program, the Commission should continue to allow ACP to be applied to bundled service offerings to maximize the choices available to qualifying households, many of whom prefer bundled services. Further, as discussed above, the Act requires the ACP to be applied to “any internet service offering of the participating provider at the same terms available to households that are not eligible households.”⁴¹ Many of AT&T’s generally available actively sold plans are a bundle of voice and data or voice, data and text.⁴² If the Commission were to limit plans eligible for the ACP to those that only include internet access, not only would consumers have significantly fewer choices, but it would be contrary to the Act. For the same reasons, the Commission should also allow the ACP to be applied to plans that include the monthly

³⁹ Public Notice at 47.

⁴⁰ Public Notice at 58.

⁴¹ Act, §60502(a)(7)(A)(i)

⁴² See, e.g., AT&T wireless plans at <https://www.att.com/plans/unlimited-data-plans/>; AT&T Prepaid plans at <https://www.att.com/prepaid/>; and, Cricket Wireless <https://www.cricketwireless.com/cell-phone-plan>. Bundled plans that include access to premium streaming services should also be eligible for ACP.

equipment cost for the modem/router equipment as part of the bundle similar to how the Commission has treated other bundled service offerings. Allowing the ACP to be applied to bundled internet service offerings will provide consumers with more choices and greater benefit.

D. REIMBURSEMENT PROCESS FOR ACP SHOULD BE SIMILAR TO EBB WITH CHANGES TO REFLECT THAT IT IS A LONG-TERM PROGRAM

AT&T supports the proposal in the Public Notice that providers be reimbursed for ACP through a process similar to the EBB Claims System.⁴³ The most important change the Commission should make to the reimbursement claims process for ACP, is to allow providers a longer period of time to file initial reimbursement claims and the ability to make adjustments to those claims.⁴⁴ It was understandable that given the temporary nature of the EBB and need to closely track the limited amount of funds, providers were required to file claims on an expedited basis (15 days after the end of the claim month) and no upward revisions were allowed. However, this timeline is extremely difficult to meet and does not allow the time providers may need to adequately review the claims before certification. In addition, there will likely be many more ACP-eligible plans thus creating even more complexity for reimbursement claims. So, for ACP, providers should have 90 days from the snapshot date to certify an initial claim and an additional 90 days for any necessary upward revision to the previously submitted claim. The Commission should delegate to the Wireline Competition Bureau the ability to shorten the period for initial and revised claims when the ACP fund is nearing exhaust.

E. ACP HOUSEHOLDS SHOULD BE RECERTIFIED ANNUALLY

AT&T supports the proposal in the Public Notice for households to “recertify their eligibility for the Affordable Connectivity Program at least annually (e.g., once a calendar year),

⁴³ Public Notice at 74.

⁴⁴ Public Notice at 77.

starting with the calendar year following their enrollment in the Affordable Connectivity Program.”⁴⁵ The recertification date for EBB-enrolled households that transition to the ACP should be the EBB-enrollment date, except that EBB households that had to re-verify eligibility before transitioning to ACP (because initially enrolled in EBB due to loss of income or a COVID program) should be recertified within one year from the date eligibility was reverified. For ease of administration, the Commission should adopt the existing Lifeline recertification requirement.

AT&T further supports the proposal in the Public Notice that USAC be responsible for households whose eligibility for ACP is determined through the National Verifier,⁴⁶ and for those households whose initial eligibility was verified through a process other than the National Verifier. In addition, to the extent technically feasible, the Commission should allow households enrolled in both Lifeline and ACP to rely on their Lifeline program recertification for ACP as ACP includes all the Lifeline eligible programs.

F. EBB PARTICIPATING PROVIDERS SHOULD NOT HAVE TO REAPPLY TO PARTICIPATE IN ACP AND ONLY A SIMPLIFIED ELECTION NOTICE SHOULD BE REQUIRED

AT&T agrees that the Act did not change the definition of “participating provider” and supports the proposal that all existing EBB Program participating providers should not have to file or resubmit a new application to participate in ACP.⁴⁷ This proposal facilitates an orderly transition to ACP as is contemplated in the Act.

AT&T agrees with the Public Notice that providers participating in the EBB Program are not required to participate in the ACP.⁴⁸ Once the Commission issues its final rules for the ACP, or later, it is possible that some providers participating in the EBB Program will not want to

⁴⁵ Public Notice at 49.

⁴⁶ Public Notice at 50.

⁴⁷ Public Notice at 9.

⁴⁸ Public Notice at 13.

participate in ACP. The process to cease participation in the ACP should not be burdensome. A provider should be required to notify USAC and provide sufficient notice to participating households, including informing the households that ACP benefits may be available to them from other providers.

Providers participating in the EBB Program were required to file election notices with USAC that included information about the state where the provider was participating, whether the provider was an existing ETC in those states or had received approval from the Commission to participate, and information about the plans for which the provider would be seeking reimbursement from EBB, together with documentation that those plans existed on December 1, 2020.⁴⁹ Providers that participated in the EBB Program and continue with ACP should not be required to file new election notices, and the Commission should not require information regarding the plans eligible for the ACP benefit (after the ACP rules are implemented).⁵⁰ The restrictions that were present with the EBB Program - a temporary program that allowed the provider to choose which plans were eligible for the EBB benefit as long they were available on December 1, 2020 - likely limited the volume of rate plan information and updates that had to be filed with USAC. ACP will be a long-term program offered on a much broader selection of broadband service offerings that will be constantly changing as providers offer new products and plans along with changing rates for existing plans over time. It would be administratively burdensome for USAC and the participating providers to constantly update this information.⁵¹

⁴⁹ Public Notice at 14.

⁵⁰ There should be no changes required to election notices of existing EBB providers until the date providers are required to implement the rule changes for the ACP.

⁵¹ There are also competitive concerns about updating the rate plan/product information with a third party prior to the public release of the new product or rate plan.

Instead, like Lifeline, providers should just be required to demonstrate that the benefit was applied to the eligible household's service.

V. CONCLUSION

The ACP is critical for households across America and consistent with AT&T's commitment to closing the digital divide. AT&T urges the Commission to allow for a smooth transition from EBB to ACP and to adopt rules that encourage participation in the program by providers and consumers.

Respectfully submitted,

By: /s/ Cindy Manheim

Cindy J. Manheim
David J. Chorzempa
David L. Lawson
AT&T Services, Inc.
1120 20th Street NW
Suite 1000
Washington, D.C. 20036
(206) 915-5557

Its Attorneys

December 8, 2021